

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANDREW ROSS and SUSAN GERARD,

Plaintiffs,

v.

No. 16-cv-1121 PJK/SMV

**HECTOR BALDERAS, JR., ROBERT GARCIA,
SARAH MICHAEL SINGLETON,
FRANCIS J. MATHEW, RAYMOND Z. ORTIZ,
DAVID K. THOMPSON, JENNIFER ATTREP,
T. GLENN ELLINGTON, SYLVIA LAMAR,
DONITA OLYMPIA SENA,
DONNA BEVACQUA-YOUNG, PAT CASADOS,
FRANK SEDILLO, WILLIAM PACHECO,
ANTONIO GUTIERREZ, ANNA MONTOYA,
JUDAH BEN MONTANO, JOHN DOES 1–2,
MICHELLE PORTILLO, STEPHEN T. PACHECO,
JANE GAGNE, JOYCE BUSTOS, LYNN PICKARD,
PAMELA REYNOLDS, ROBIN MARTINEZ,
ROBERT RICHARDS, BRENDA WALL,
AUDREY MONTOYA, ALLSTATE INSURANCE, INC.,
A. ARROYO, and E. MONTIJO,**

Defendants,

and

PAMELA REYNOLDS and ROBERT RICHARDS,

Counterclaimants,

v.

ANDREW ROSS and SUSAN GERARD,

Counter-defendants.¹

¹ All the claims and counterclaims have been dismissed. *See* [Docs. 8, 69, 76, 81, 91, 112, 121, 137, 144, 168, 169, 174, 188, 189]. Plaintiff/Counter-defendant Gerard has passed away, and substitution of her estate was denied. [Doc. 232] at 2.

ORDER DENYING PLAINTIFF'S
THIRD MOTION FOR PROTECTIVE ORDER

THIS MATTER is before the Court on Plaintiff Andrew Ross's ("Plaintiff's") Third Motion for Protective Order [Doc. 309], filed on January 12, 2018. No response has been filed and none is needed. The motion will be denied.

Judgment was entered against Plaintiffs on October 2, 2017, in the amount of \$26,020.59. [Doc. 269]. A deposition in aid of execution of the judgment was set for January 9, 2018. [Docs. 287, 299]. The notice of deposition required Plaintiff to bring certain documents to the deposition. [Docs. 287, 299, 300]. Plaintiff appeared, but he did not bring any of the documents. In fact, he did not cooperate at all. [Doc. 308] at 12. Plaintiff objected to Angelique Wall's being present at the deposition. [Doc. 309] at 1–3; [Doc. 308] at 12. Apparently, Ms. Wall is a paralegal assisting Defendant Richards, [Doc. 211] at 5–8, [Doc. 308] at 12, and Richards is an attorney who represents himself pro se and who noticed the deposition, [Docs. 287, 299]. Plaintiff alleges, however, that Ms. Wall was involved in the disputes that gave rise to this lawsuit in the first place. [Doc. 309] at 1–2. He urges that her presence was meant to distress him; he likens it to "bringing a Nazi in full Nazi regalia to a holocaust survivor's home." *Id.* at 2. Plaintiff refused to be sworn or answer any questions at the deposition unless Ms. Wall left the room or unless she answered Plaintiff's own questions about her involvement in the underlying disputes. [Doc. 308] at 12. The deposition concluded after about five minutes. *Id.*

Plaintiff now moves for a protective order barring Richards from ever deposing him. [Doc. 309] at 3. He argues that, considering his history with Ms. Wall, being subjected to her presence during the deposition amounts to harassment. *Id.* at 2–3. Under the circumstances of

this case, however, the Court is not persuaded that a protective order should issue. Plaintiff fails to show good cause for either excluding Ms. Wall from the deposition or being relieved of the deposition in the future. Of course, Plaintiff may properly avoid the deposition by simply paying the judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff Andrew Ross's Third Motion for Protective Order [Doc. 309] is **DENIED**.

If the deposition is reset, Plaintiff is again admonished that his failure to appear, to bring the required documents, or to cooperate with the deposition **could result in sanctions being imposed against him, including contempt of court**. See Fed. R. Civ. P. 37(d)(1)(A)(i) (court may order sanctions where a party "fails, after being served with proper notice, to appear for that person's deposition"); *O'Connor v. Midwest Pipe Fabrications, Inc.*, 972 F.2d 1204, 1210 (10th Cir. 1992). **The penalties for contempt include fines and incarceration.**

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge